



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0378; FRL-9783-8]

**Approval and Promulgation of Air Quality Implementation Plans;
Pennsylvania; Revision to Allegheny County Regulations for Prevention of Significant
Deterioration**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the Air Pollution Control portion of the Allegheny County Health Department (ACHD) Rules and Regulations, relating to ACHD's Prevention of Significant Deterioration (PSD) program. Additionally, EPA is also approving this revision for the purpose of determining that ACHD has met its statutory obligations with respect to the infrastructure requirements of the Clean Air Act (CAA) which relate to ACHD's PSD permitting program and are necessary to implement, maintain, and enforce the 1997 ozone National Ambient Air Quality Standard (NAAQS) as well as the 1997 and 2006 NAAQS for particulate matter less than 2.5 microns (PM_{2.5}). EPA is approving these revisions that incorporate by reference the Federal PSD program in its entirety in accordance with the requirements of the CAA.

DATES: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2012-0378**. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e.,

confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, (215) 814-2183, or by e-mail at wentworth.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 11, 2012 (77 FR 34300), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of a SIP revision pertaining to the Air Pollution Control portion of the Allegheny County Health Department (ACHD) Rules and Regulations, relating to ACHD's PSD program. The formal SIP revision was submitted by Commonwealth of Pennsylvania on July 1, 2008.

II. Summary of SIP Revision

The SIP revision submitted by Pennsylvania on behalf of ACHD consists of regulations

pertaining to ACHD's Prevention of Significant Deterioration (PSD) program. These regulations incorporate by reference the federal PSD program at 40 CFR section 52.21. Any changes in the Federal program occurring after the date the ACHD regulations were promulgated are automatically incorporated into ACHD's regulations and into its SIP. By approving this SIP revision, EPA is formally approving ACHD's PSD program, which had previously been operating under a delegation agreement.

Accordingly, the SIP revision incorporates the new PSD requirements for PM_{2.5} pursuant to the EPA's "Prevention of Significant Deterioration (PSD) for Particulate Matter less than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (PSD PM_{2.5} Rule), which was promulgated on October 20, 2010 (75 FR 64864), including the provision at 40 CFR section 52.21(k)(2) adding the PM_{2.5} SILs and the provision at section 52.21(i)(5)(i)(c) adding the PM_{2.5} SMC. On January 22, 2013, the U.S. Court of Appeals for the District of Columbia Circuit ("the Court") in *Sierra Club v. EPA*, No. 10-1413 (filed Dec. 17, 2010), issued a judgment that, *inter alia*, vacated and remanded the provisions at section 52.21(k)(2) and vacated the provisions at section 52.21(i)(5)(i)(c) that were promulgated as part of the October 20, 2010 PSD PM_{2.5} Rule. On this same date, the Court ordered that issuance of the mandate shall be withheld until seven days after any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. Proc. 40(a)(1); Fed. R. App. P. 41(b). Upon issuance of the mandate, the Court's decision will become final and the provisions of sections 52.21(k)(2) and (i)(5)(i)(c) will be vacated. At that time, ACHD's regulations and SIP will automatically update such that they no longer include that regulatory text, as the vacatur will render those provisions without legal effect. Although the Court's decision is not final until

the mandate issues, EPA expects ACHD to act consistently with the Court's opinion in applying the Federal PSD regulations prior to formal issuance of the mandate. Thus, EPA is approving the SIP revision as submitted.

Other specific requirements of the regulations and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the July 1, 2008 SIP revision as a revision to the Commonwealth of Pennsylvania SIP. EPA is also approving this revision for the purpose of determining that ACHD has met its obligations pursuant to the PSD portions of CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for the 1997 ozone and PM_{2.5} NAAQS and the 2006 PM_{2.5} NAAQS.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal

governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, relating to ACHD's PSD program, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 8, 2013

W. C. Early, Acting
Regional Administrator,
Region III.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN -- Pennsylvania

2. In § 52.2020:

a. The table in paragraph (c)(2) is amended by adding an entry for section “2102.07” in numerical order.

b. The table in paragraph (e)(1) is amended by adding three new entries “Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS”, “Section 110(a)(2) Infrastructure Requirements for the 1997 PM_{2.5} NAAQS”, and “Section 110(a)(2) Infrastructure Requirements for the 2006 PM_{2.5} NAAQS” at the end of the table.

The revised and added text reads as follows:

§ 52.2020 Identification of plan

* * * *

(c) * * *

(2) * * *

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
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Part B	Permits Generally			
* * *	* * *			
2102.07	Prevention of Significant Deterioration	3/31/98	[Insert Federal Register publication date] [Insert page number	Added.

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
			where the document begins]	
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(e)***

(1) ***

Name of non- regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *				
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS	Allegheny County	7/1/08	[Insert Federal Register publication date] [Insert page number where the document begins]	This action addresses the PSD related elements of the following CAA requirements: 110(a)(2)(C), (D)(i)(II), and (J)
Section 110(a)(2) Infrastructure Requirements for the 1997 PM _{2.5} NAAQS	Allegheny County	7/1/08	[Insert Federal Register publication date] [Insert page number where the document begins]	This action addresses the PSD related elements of the following CAA requirements: 110(a)(2)(C), (D)(i)(II), and (J)
Section 110(a)(2) Infrastructure Requirements for the 2006 PM _{2.5} NAAQS	Allegheny County	7/1/08	[Insert Federal Register publication date] [Insert page number where the document begins]	This action addresses the PSD related elements of the following CAA requirements: 110(a)(2)(C), (D)(i)(II), and (J)

[FR Doc. 2013-04291 Filed 02/27/2013 at 8:45 am; Publication Date: 02/28/2013]